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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,980	12/10/2003	Gerard Gieux	L741.03111	5130

7590 03/24/2006

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EXAMINER

DEVORE, PÉTER T

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/730,980	Applicant(s) GIEUX, GERARD	
	Examiner Peter T. deVore	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 15 February 2006.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) 3-15, 17, 21 and 22 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1, 16 and 18-20 is/are rejected.

7) ☒ Claim(s) 2 is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 3-5, 8-15, 17, 21, and 22 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/15/05. Additionally, the amendment to claims 6 and 7 in Applicant's response mailed 8/3/05 changes their dependency to withdrawn claim 4. Therefore, claims 3-15, 17, 21, and 22 are now withdrawn from consideration as being drawn to a nonelected Species.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3938347 (the Grunecker reference, see attached translation).

Regarding claim 1, the Grunecker reference discloses an applicator which is capable of dispensing powder including a reservoir 12, storage means comprising very open foam pad 9 between the reservoir and a porous membrane 4, the porous membrane of synthetic (plastic) foam tensioned over the reservoir (see translation p.

11) which is much less open than the foam of the pad (see Fig. 1), but does not disclose that the foam of the storage means is synthetic. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the foam of the pad from synthetic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In *Re Leshin*, 125 USPQ 416. Regarding claims 19 and 20, the Grunecker reference discloses an applicator as discussed supra, but remains silent as to the diameter and distribution of the pores in the pad. However, it would have been obvious to employ a pad having pores of a diameter and distribution within the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In *re Aller*, 105 USPQ 2336.

Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grunecker in view of Weihrauch.

Regarding claim 16, the Grunecker reference discloses an applicator as discussed supra, but does not disclose that the foam pad is mushroom shaped. However, the Weihrauch reference discloses a similar applicator wherein the applicator is mushroom shaped to maximize the application surface area (see Figure 4). It would have been obvious to modify the Grunecker applicator to have a mushroom shaped foam pad in view of Weihrauch to maximize the application surface area.

Regarding claim 18, the Grunecker reference discloses an applicator as discussed supra, but does not disclose that the exterior of the membrane is flocked.

However, the Weihrauch reference discloses a similar applicator wherein the outer surface of the applicator is flocked (see col. 8, lines 55-57) to improve transfer of product from the applicator to the surface. It would have been obvious to modify the modified Grunecker applicator so that the outer surface of the membrane is flocked in view of Weihrauch to improve transfer of product from the applicator to the surface.

Allowable Subject Matter

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1, 16, and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

Peter J. M. Va